

BOARD OF APPEALS CASE NO. 5535

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BEFORE THE

APPLICANTS: Simmons Wright Aeropark and
Harford County Airport Owners Group

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ZONING HEARING EXAMINER

REQUEST: Expansion of a non-conforming use
to construct an aircraft storage hangar in the AG
District

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OF HARFORD COUNTY

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HEARING DATE: July 17, 2006

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Simmons Wright and Harford County Airport Owners Group are requesting expansion of an existing non-conforming use (Aldino Airport) pursuant to Section 267-21 of the Harford County Code for the construction of new hangars in the AG District.

The subject parcel is located at 3554 Aldino Road, Churchville, Maryland 21028, and is more particularly identified on Tax Map 43, Grid Number 2D, Parcel 84. The parcel contains 10.87 acres more or less.

Mr. Stephen M. Wright, Vice-President of the Applicant, Harford County Airport Owners Group, Inc. (herein Harford County Airport) and Vice-President and shareholder of Simmons-Wright Aeropark, LLC (herein Simmons-Wright) appeared and testified on behalf of the Applicants. He stated that Harford County Airport is a for-profit Maryland Corporation owned by approximately 40 stockholders. Simmons-Wright is a Maryland Limited-Liability Company owned equally by Mr. Wright and S. Fred Simmons. Simmons-Wright owns 95% of the total outstanding stock in Harford County Airport, and also owns the subject property, which adjoins the Airport to the north and west.

Mr. Wright explained that the subject property is outlined in green on the airport property plat, which was introduced as Applicant's Exhibit 1. The Applicants propose to build additional hangars on the subject parcel for use by the adjoining Harford County Airport. The colored portion in the center of Applicant's Exhibit 1 depicts the maximum number of hangars permitted on the parcel. If the request is granted, an agreement will be entered into between Harford County Airport and Simmons-Wright, which would allow Simmons-Wright to use the existing airport. Title to the subject property would then be transferred to Harford County Airport, and both parcels would be combined into a single lot.

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According to the witness, the Harford County Airport has been in continuous operation at its present location for over 65 years. The airport, which celebrated its 50th anniversary in 1951, (*See Applicant's Exhibit 4*) is included in the 2004 Harford County Master Plan, as well as in the Land Use Element Plan and the Transportation Plan (*See Applicant's Exhibits 8 - 11*). It is also recognized by the FAA, and is included in the FAA and Maryland State Airport Facility directories (*See Applicant's Exhibits 5-7*)

Mr. Wright testified that the existing airport is notorious for having had two airplanes stolen therefrom a number of years ago. One of those planes was flown into the White House, and the other was flown into the former Memorial Stadium in Baltimore. The Applicants are proposing to increase safety at the airport by adding a fenced in area to accommodate additional locked hangars. This would eliminate, to the extent possible, airplanes being tied down for open field storage on the subject property. The maximum number of planes proposed to be stored in the newly constructed hangars is 76. However, this number may be reduced based on the results of a Wetlands Determination Study necessitated by the presence of wetlands on the southeastern portion of the property. The actual number of hangars constructed on the site would also be impacted by the size and type of hangars installed (*See Applicant's Exhibit 2*), and required setbacks from nearby residential dwellings and runways.

Mr. Wright indicated that the Applicants had read the Department of Planning and Zoning Staff Report, and were willing to abide by all conditions proposed therein with the exception of Condition Number 5. That condition recommends eliminating the existing access drive to Aldino Road and requiring that all access to the hangar area be from the overall airport property. Two adjoining landowners utilize a small portion of the existing gravel road to access to their driveways. The Applicants are concerned that closing this access drive completely would impede the homeowners entry to their properties. They therefore propose to instead gate off the Aldino Road access drive approximately 200 - 300 feet back from the roadway. This would also allow the existing drive to be used for emergency ingress and egress to the subject property should the need arise. Finally, the witness stated that in his opinion, granting the requested expansion would result in no adverse impact to neighboring properties.

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Ms. Roma Reeves, who resides at 3552 Aldino Road, appeared and cross-examined Mr. Wright concerning the distance between the proposed hangars and her home. Mr. Wright responded that her property is a minimum 300 feet from the proposed hangar location, and that the hangars would be no more than 10 to 15 feet closer to her home than the brick ranch house presently located on the subject property. In response to cross-examination by Ms. Rosemary Queen, who resides in in Aberdeen, approximately 1 ½ miles from the subject property, the witness indicated that all proposed hangars will actually be located on the subject property. He also verified that the parcel is zoned Agricultural, and is located outside the Development Envelope. In response to questions regarding his opinion about lack of adverse impact to adjoining properties, the witness stated that the existing airport has been in use for 65 years and planes fly in and out of the property on a regular basis. He also indicated that the proposed hangars will actually improve safety and security at the existing airport by moving planes that are permanently tied down outside into locked indoor hangars. Mr. Wright did, however, acknowledge that air traffic may increase slightly as there may eventually be more planes stored at the site.

In response to cross-examination by Ms. Josie Frederick, whose daughter, son in law and grandchildren reside at 3626 Aldino Road, the witness clarified that the types of planes utilizing the facility would not change if the subject request were granted. Air traffic would still consist of Piper Cub and Cessna 172 variety planes, as larger planes need larger runways, and no runway changes are proposed. In fact, the witness stated that the FAA has established set requirements for runway length. In response to Ms. Frederick's questions concerning a possible increase in airplane noise levels, the witness explained that Maryland has approved a noise abatement procedure for Harford County Airport. This procedure prohibits planes from turning until they reach an altitude of 1400 feet. Therefore, air traffic patterns will not change, and no planes will be flying directly over her relatives' home.

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In response to cross examination by Mr. Robert Price, also of Aberdeen, the witness indicated that the subject request will not cause any safety issue with regard to possible population growth resulting from Aberdeen's annexation of nearby land bordering Aldino Road. First, he indicated that he believes the proposed annexation is at least 2-3 miles away from the subject property. Second, he opined that aviation is one of the safest forms of transportation available.

Mr. Jeff Tyler, who resides at 3552 Aldino Road, appeared and cross-examined Mr. Wright concerning the proposed screening of the subject property from adjoining residences. The witness replied that although the Applicants have not yet determined exactly what landscaping will be installed, it will likely consist of a fence, and fast growing trees which would prevent adjoining residences from seeing the hangars. Mr. Wright also reiterated his prior testimony about the Applicants proposal to keep a portion of the Aldino Road access drive open for adjacent landowners.

Mr. Kevin Hess was the second witness to testify for the Applicants. Mr. Hess, a pilot and flight instructor, has been connected with the Harford County Airport for over 10 years. He is currently the airport manager, runs the flight school and airport fuel services, and owns Harford Air Services, the only commercial air operation at the airport. Mr. Hess indicated that based upon his review of the proposal, the length of the existing runways would not be increased. Larger planes would therefore not be able to begin utilizing the facility.

According to the witness, Harford County Airport has been in operation for approximately 65 years. It has been recognized by both the FAA and the Maryland Aviation Administration, and is included in the Harford County Transportation Plan. Approximately 99% of the airplanes at the airport are privately owned, and are used less than 50 hours per calendar year for recreational purposes. However, the airport also provides a valuable service to the community, as it is the only airport providing commercial operations to Harford County residents.

Mr. Hess further testified that planes from all over the country regularly fly in and out of Harford County Airport for both business and recreational purposes. He indicated that the airport is highly safety oriented, abides by all regulations, and does everything possible to eliminate complaints from neighboring property owners. The witness testified that the proposed hangars

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would be used solely for airplane storage, and that it would be possible to prohibit maintenance in the hangar area. He also noted that there is a substantial need for additional indoor airplane storage at the facility, and stated that he had received two calls that very day requesting such storage. Finally, Mr. Hess concurred with Mr. Wright that although the subject site would be fenced, a gate could be installed far enough back on the Aldino Road access drive to permit access to adjoining properties.

In response to questions on cross-examination, the witness clarified that although he has been associated with the Harford County Airport for 10 years, he has functioned as its manager for only 3 of those years. Only one accident report has been required to be filed during his tenure. That report involved an airplane which crashed during takeoff. However the witness did indicate that all required accident reports are available for viewing on the Federal Aviation Administration and Maryland Aviation Administration websites.

Mr. Anthony McClune, Deputy Director for the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune stated that the Harford County Airport has been in operation since 1941. The subject property has had industrial zoning since the 1960's and the existing airport has always been a non-conforming use. The only prior Board of Appeals Case pertaining to the subject property (Case No. 4700) involved a request for a variance to disturb wetlands in order to fill in a drainage ditch at the end of a runway. That action was undertaken for safety purposes. The decision issued by the Board in that case recognized that there had been an airport operating on the subject property since the 1940's.

The witness described the current Application as a simple request to expand an existing non-conforming use. If granted, the approval would change neither the operation of the airport, nor the types of planes utilizing the facility. Those factors are limited by the size and configuration of existing runways, and are governed by the Maryland Aviation Administration which operates under the control of the Federal Aviation Administration. According to Mr. McClune the Department determined that all provisions of Section 267-21 can be met if the subject application is approved.

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In addition, the Department considered all factors set forth in Section 267-9I of the Harford County Code. He testified that the Department of Planning and Zoning also determined that the proposed use would cause no adverse impact to any adjacent properties. He acknowledged that although it is possible air traffic may increase slightly, the proposed improvements at the facility would result in overall increased safety and security. In addition, he opined that many of the planes which would be using the proposed hangars are already tied down outside on the subject property.

In response to cross examination regarding potential impacts which might be caused by the town of Aberdeen's annexation of property 2-3 miles from the subject site, Mr. McClune testified as follows: 1) He is familiar with the proposed annexation and it would not cause any safety concerns in connection with the subject application; 2) He is unsure of the exact distance between the proposed annexation and the subject site; 3) The subject property is outside the Aberdeen town limits; 4) Harford County Government, not the City of Aberdeen, has jurisdiction regarding zoning issues pertaining to the subject application; and 5) Aberdeen's proposed annexation is unrelated to the subject application.

Mr. McClune also testified on cross-examination that the existing natural features designations of the subject property will not change. He also stated that the Harford County Zoning Code allows airports on rural legacy AG parcels, by special exception, but noted that no Special Exception was required in this case because the airport is an existing a non-conforming use. Mr. David Rice appeared to testify in opposition to the Application because in his opinion, the Applicant, Mr. Wright, who happens to be the mayor of Aberdeen, is violating Harford County's Master Plan by annexing adjoining property for the town. The Hearing Examiner sustained Applicants' objection to the aforesaid testimony on the basis that it was irrelevant to the subject Application.

CONCLUSION:

The Applicants, Simmons Wright and Harford County Airport Owners Group are requesting expansion of an existing non-conforming use (Aldino Airport) pursuant to Section 267-21 of the Harford County Code for the constriction of new hangars in the AG District.

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The following is a review of applicable code sections, and the Hearing Examiner's findings (*in italics*) regarding each code provision:

Section 267- 21 of the Harford County Code provides:

The Board may authorize the extension or enlargement of a non-conforming use, with or without conditions, provided that:

- A. The proposed extension or enlargement does not change to a less restricted and more intense use.

The Hearing Examiner finds that the existing non-conforming airport has been in operation on the present site for over 65 years. A large number of planes are currently tied down on the subject property, to the right of the existing hangars. The Applicants can increase safety at the airport by fencing the subject parcel and constructing a number of new hangars. No changes are proposed to the existing runways. The size of the airplanes utilizing the facility will not increase as a result of this expansion because larger planes need larger runways in order to land safely.

- B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the non-conformity.

The existing airport is located on a 58 acre parcel adjoining the subject property. Use of the subject 10 acre parcel will not exceed 50% of the area in use when the non-conformity was created.

- C. The enlargement or extension does not violate the height or coverage regulations for the district.

The Hearing Examiner adopts the Department of Planning and Zoning's findings that the proposed hangars must be designed so as not to violate height or coverage regulations for the District.

- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.

The proposed hangars will not create a significant amount of additional air traffic because most of the planes to be stored therein are already housed at the facility, and are tied down outside on the subject site. The Maryland Aviation Administration has approved a noise abatement procedure for Harford County Airport which prohibits planes from turning until they reach an altitude of 1400 feet. This procedure would not change as a result of the proposed new construction. Therefore, noise levels emanating from planes flying over nearby residences would

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not increase. Visual impact of the proposed hangars on adjacent dwellings to the south can be reduced or eliminated by the installing screening around the hangars. Finally, the Applicants propose to fence the entire site, and close off the Aldino Road access drive except for use by adjoining property owners and emergency vehicular traffic.

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- E. The limitations, guides and standards set forth in Section 267-9I, Limitations, Guides and Standards, are considered by the Board.

The provisions contained in Section 267-9I are discussed infra.

Section 267-9I of the Harford County Code provides:

Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

1. The number of persons living or working in the immediate area.

As set forth in Section 267- 21 (C) above, the Hearing Examiner finds that the proposed hangars will not create a significant amount of additional air traffic, or noise in the vicinity of the subject property. In addition, the visual impact of the proposed hangars on adjoining residential properties could be minimized or eliminated by appropriate screening.

2. Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

The proposed extension will not adversely affect traffic conditions in the vicinity of the subject property. Most of the planes housed at the Harford County Airport are used for recreational purposes and are flown less than 50 hours per year. Virtually no vehicular traffic will be entering the subject property from Aldino Road, as the access drive will be closed, and gated approximately 200-300 feet from the road and used only for emergency access.

3. The orderly growth of the neighborhood and community and the fiscal impact on the county.

The construction of additional hangars will provide increased indoor storage for planes housed at the facility thereby increasing safety at the airport. This construction will have no fiscal impact on the county.

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4. The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

The construction of additional hangars should not cause any odors, dust, gas, smoke, fumes, vibration, glare or noise.

5. Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

The construction of additional hangars will have no impact on public facilities, or the County's ability to supply such services.

6. The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

The Hearing Examiner accepts the Department of Planning and Zoning's finding that "The subject request is "generally consistent with accepted planning principals."

7. The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

Not applicable to the request.

8. The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

The Hearing Examiner accepts the Department of Planning and Zoning's finding that "The request to construct additional hangars is an improvement to the existing facility and provides security for the planes" and that "[t]he proposal is consistent with the Master Plan"

9. The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

The Hearing Examiner finds that although there are wetlands present on the subject property, the site plan submitted for review by the Development Advisory Committee will identify existing Natural Resources District areas, and no construction will be permitted to impact the district. In addition, proposed hangars within that district will need to be eliminated.

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10. The preservation of cultural and historic landmarks.

Not applicable to the request.

Having found that the subject request meets or exceeds all requirements of both Section 267-21 and Section 267-9I, the Hearing Examiner recommends approval of Applicant's request for expansion of a non-conforming use, subject to the following conditions:

1. The Applicants shall obtain all necessary permits and inspections for the proposed hangars.
2. The Applicants shall adequately buffer and screen the proposed hangars from the residential properties to the south along Aldino Road, and shall submit a landscaping plan to the Department of Planning and Zoning for review and approval prior to the issuance of building permits
3. The Applicants shall prepare a detailed site plan for review and approval thru the Development Advisory Committee (DAC). No maintenance of planes shall take place within the hangar area.
4. The 10" acre parcel shall be combined with the overall 58" airport property.
5. That the existing access drive from the subject site to Aldino Road may continue to be utilized by adjacent residential property owners, but shall be gated and secured beyond their driveway entrances, and may only be used for emergency access to the hangar area.

Date: AUGUST 22, 2006

REBECCA A. BRYANT
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on SEPTEMBER 20, 2006.